Nebraska Real Estate Commission

COMMISSION COMMENT

Summer 2002

STATUTORY AMENDMENT CHANGES CHANGES EFFECTIVE JULY, 20, 2002

On July 20, 2002, the Nebraska Real Estate License Act, the Agency Relationships Statute and the Seller Property Condition Disclosure Statute will be changed by amendments which appeared in LB 863 which was passed by the Legislature and approved by the Governor in April.

Following is a summary of the substantive changes made to each statute. Stylistic changes made by the Revisor of Statutes to conform with drafting standards in effect at this time will not be summarized here.

An update to the License Manual will be mailed this Fall and will include recently passed amendments to Rules and Regulations, any amendments made at the June Rule Hearings, as well as these legislative changes.

Commission Meeting Schedule

June 12-13 Lincoln August 21-22 Lincoln September 25-26 . . . Lincoln

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LICENSE ACT

References to "commissions" were deleted and replaced with "any form of compensation" throughout the Act. Obsolete language was deleted as appropriate.

The definition of designated broker was amended to include "sole proprietorships" and the procedure for appointing designated brokers was also clarified.

The term "distance education" was defined and substituted throughout the Act for the term "correspondence courses."

The term "regulatory jurisdiction" was defined to include states, districts, or territories of the United States, provinces of Canada, foreign countries or political subdivisions thereof who have implemented real estate regulatory laws. The term "regulatory jurisdictions" was then inserted for the term "state" in the Act. This now allows Nebraska to apply its "license for license" recognition statutes on a global basis.

The provision that a branch manager could only manage one branch office at a time was deleted. Effective July 20, a branch office manager may manage one or more branch offices for his or her designated broker.

The provisions of the Act which referenced the protected classes under the Fair Housing Act were updated to reflect current Fair Housing Act terminology.

A provision was amended into the Act regarding "referral fee" payments. Currently only persons licensed in their resident state (to become "resident regulatory jurisdiction") can be paid "referral fees." The new language in section 81-885.24 (18) will allow a broker to pay "referral fees" to a citizen who

resides in a foreign country which has not implemented real estate licensing laws but which citizen conducts the activities of a broker in that country. Prior to paying such "referral fee" the Nebraska broker must have received "reasonable written evidence" that said payee is:

1) a resident citizen of said foreign country without a real estate licensing law; 2) NOT a resident of the United states; and 3) conducting the activities of a broker in that foreign country. Such written evidence should be maintained for at least five years like other trust account records are maintained.

The premium limit of \$100.00 on errors and omissions insurance was increased to \$200.00.

AGENCY RELATIONSHIPS STATUTE

Clarified that a licensee does not have to provide a brochure and its disclosures to a buyer or tenant who is represented by another licensee under the statutory presumption without a written agreement.

Sets forth that the list of tasks to be disclosed to an unrepresented customer are those which "may" be performed not those "intended" to be performed.

Exempts licensees who are working in certain commercial-type transactions from having to provide the "Brokerage Relationships" brochure to business entities with whom the licensee is working either as a client or a customer. The "brochure" would not need to be given to buyers, tenants, sellers, or landlords which are a corporation, limited liability company, partnership, limited liability partnership or similar entity or to any entity which, if doing business in Nebraska, would

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COMMISSION COMMENT

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The Nebraska Real Estate Commission grants permission to reprint articles which appear in this newsletter on condition that recognition of their original publication in the **Nebraska Commission Comment** also appears with the article.

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DIRECTOR'S DESK-

Seller Property Condition Disclosure Statement Amendments Proposed

A public Hearing will be held at 9:30 a.m. on June 12, 2002, to consider amendments to the Seller Property Condition Disclosure Statement, Title 302 of the Commission's Rules and Regulations. Copies of the proposed amendments are available from the Commission Office or can be accessed through the Commission's website. Website access is gained by clicking on "Proposed Amendments to Title 302" in the left-hand Menu. The location for the Hearing will be the Staybridge Suites, 2701 Fletcher Avenue in Lincoln, Nebraska.

The Ignell

Les Tyrrell, Director Nebraska Real Estate Commission



MEET THE REAL ESTATE **COMMISSION STAFF**

The Real Estate Commission Staff is here to serve the public and the licensee population. It is our goal to be helpful and forthright in a courteous and professional manner. We hope that when you contact our office, you always receive useful, accurate information and/or are referred to the proper authority.

Following is a communication resource to assist you when contacting our office. If the indicated person is unavailable to take your call, please share the purpose for the call and your call will be routed to someone else who can help you.

We take pride in having a skilled staff, if you have comments or suggestions as to how we may better serve you, please contact our office.

COMMUNICATIONS GUIDE

Ask for person indicated if you have questions in the following areas.

Commission Meeting Information . . Heidi Burklund InfoTech@nrec.state.ne.us

Complaint Procedures Terry Mayrose DDEnf@nrec.state.ne.us Continuing Education History or

Julie Schuur EdEnf@nrec.state.ne.us

Curriculum Design (Education & Instructor Approval) Teresa Hoffman

DeputyD@nrec.state.ne.us Errors and Omissions Insurance

DeputyD@nrec.state.ne.us

License Applications Packet General Staff Requests .

License Applications Process TBA Applic@nrec.state.ne.us

Licensing and Education

Requirements Teresa Hoffman DeputyD@nrec.state.ne.us

New Licenses in Process TBA Applic@nrec.state.ne.us

Specialized Registrations Monica Wade Finance@nrec.state.ne.us

Transfer of License Christy Arfman LicTsf@nrec.state.ne.us

Trust Account Matters Terry Mayrose DDEnf@nrec.state.ne.us John Clark

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Statutory Amendment Changes

(Continued from page 1)

be required to be registered with the Secretary of State and which entities are purchasing, leasing, or selling real property: (1) on which there are five or more residential dwelling units: (2) which is subdivided for five or more residential dwelling units; or (3) any portion of which is zoned or assessed by the county assessor as commercial or industrial property.

Provisions were included which clarified that copies of written agency agreements needed to be left with the client, and written agency agreements must include fixed expiration dates.

Dual agency provisions regarding the written document were changed and procedures clarified. Under the new language, a seller or landlord can consent to a possible dual agency in the written agreement with the licensee, e.g. the listing agreement. (This is the current "threshold" dual agency language.) A buyer or tenant can consent to the dual agency either in a separate consent to dual agency or as part of any written agency agreement. The buyer or tenant consent can refer to one or more properties or generally to all properties on which the licensee would be a dual agent. Should a transaction come together in a dual agency representation on a specific property, in addition to the above described consent, prior to or at the time the contract to purchase or the lease or letter of intent to lease is entered into for the specific property, the licensee shall have the seller and buyer or landlord and tenant confirm in writing: (1) the dual-agency status; and (2) the party or parties responsible for paying any compensation.

SELLER PROPERTY CONDITION **DISCLOSURE STATUTE**

Clarifies that a Disclosure Statement is only required of a seller if the residential real property is being used primarily for residential purposes.

New language will require the seller to update the information on the Disclosure Statement whenever the seller has knowledge the Statement is no longer accurate up to and including the effective date of any contract which binds the purchaser to purchase the real property.

A Seller Property Condition Disclosure Statement will not be required on newly constructed residential real property which has never been occupied.

Also a Disclosure Statement will not be required from a third-party relocation company, if the company provides a Disclosure Statement from the most immediate seller, unless the most immediate seller meets one of the other exemptions. If a Disclosure Statement is required and the relocation company does not provide the Statement from the most immediate seller to the purchaser under law then the relocation company shall be liable to the purchaser to the same extent as a seller would be.

A provision was inserted which was intended to limit obligations of a licensee under this statute. Following is the provision as it appears in statute. You should have your legal counsel review the provision and the provisions it references with regard to your duties and obligations.

76-2,120 (10) "A person licensed as a salesperson or broker pursuant to the Nebraska Real Estate License act shall not be required to verify the accuracy or completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the property subject to the disclosure statement. This subsection does not limit the duties and obligations provided in section 76-2418 or in subsection (9) of this section with respect to a buyer's agent."

We've Got Mail!!

E-mail, that is. The Commission is focusing on technology. Our goal is to enhance our accessibility and service to the Public and to our Licensee Population.

With that in mind, let us call your attention to the addition of e-mail addresses in the "Communications Guide" located on page 3. If you have any questions, please feel free to contact us by phone, mail, or e-mail, so that we may be of assistance.

NEW BROKERAGE RELATIONSHIPS BROCHURES AUTHORIZED FOR USE JULY 20, 2002 REQUIRED JANUARY 1, 2003

As was reported in the Spring Commission Comment, the current Brokerage Relationships brochure used to disclose the relationship the licensee has with the buyer, tenant, seller, or landlord has recently been reviewed by the Commission. After careful consideration, the Commission decided to mandate the use of two brochures. A sample of each brochure has been enclosed in this newsletter.

One brochure is designed for use with buyers and sellers while the other brochure is designed to be used with tenants and landlords. The cover page clearly distinguishes between the two and while the content is substantially the same as in the previous brochure, it now is

specific to buyers/sellers or tenants/landlords depending on the brochure. It is the Commission's hope that the appropriate use of these brochures and the simplified disclosure page will contribute to greater knowledge and better understanding by the public.

The enclosures are samples only and not to be copied and used. Camera-ready originals will be mailed to each employing broker by June 28, 2002. As previously practiced, these originals should be personalized for use by brokers and their affiliated licensees. See the article entitled, "Instructions for Including Optional Information in the Commission-Prepared and Approved Disclosure Brochures". Vietnamese

and Spanish versions of the brochures will be available through the Commission Office after June 30, 2002.

While some changes to the Statute discussed in our cover story will affect these disclosures, timing of disclosures and type of disclosure remain virtually the same. The new brochures cannot be used until July 20, 2002, due to the fact that the Statute changes are not effective until that day. However, a transition period from July 20 through December 31, 2002, will allow supplies of current existing brochures to be exhausted. Total conversion to the new brochures will be mandatory January 1, 2003.

Instructions For Including Optional Information in the Commission-Prepared and Approved Disclosure Brochures

In the development of the disclosure brochures required under Nebraska Agency Relationships statutes, the Commission left space after each description of a brokerage or limited agency relationship. This space has been provided so that designated brokers may use it to include information and disclosures the statute also requires. Examples have been set out in A and B below.

When inserting this information, designated brokers are required to use a different type of print, such as italics, boldface, capital, etc., in order for their information to be distinguishable from that part of the brochures which were prepared and approved by the Commission.

A. To indicate types of brokerage relationships offered:

Language similar to the following could be inserted after the appropriate brokerage relationship description: (Name under which broker is doing business) offers this type of brokerage relationship.

OR

(Name under which broker is doing business) does not offer this type of brokerage relationship.

- B. A licensee working as an agent or subagent of a client with a customer who is not represented by a licensee must provide a written disclosure to the customer of the tasks the client's agent or subagent may perform with the unrepresented customer. These tasks could also be disclosed by listing them after the appropriate brokerage relationship description.
 - 1. Examples of tasks a seller's or landlord's agent or subagent may perform with an unrepresented buyer or tenant may include, but not be limited to, the following:

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- a) Tasks for unrepresented buyer by seller's agent:
 - 1. Explain the home buying process. Assess your wants and needs in a property.
 - 2. Conduct previews and showings of multiple properties.
 - 3. Assist in determining financial ability to purchase.
 - 4. Assist in selection of properties best fitting your needs.
 - 5. Provide information on available financing.
 - 6. Provide estimate of total investment and monthly investment required, based on the offer.
 - 7. Provide estimate of closing costs at the time of completing the offer to purchase.
 - 8. Review and explain clauses in the sales contract.
 - 9. Provide background information you wish given to the seller regarding the terms of the offer.
 - 10. Present offers to the seller and counter-offers from the seller.
 - 11. Provide follow-up services, including arranging inspections, appraisal, and delivering documents and copies.
 - 12. Keep in contact with lenders, inspectors, and sellers while awaiting closing and report progress.
- b) Tasks for unrepresented tenant by landlord's agent:
 - 1. Explain the leasing process. Assess your wants and needs in a leased space.
 - 2. If requested, conduct previews and showings of locations available in the market place.
 - 3. Assist in determining financial ability to lease.
 - 4. If requested, provide market data for comparable leased space that substantiates the landlord/owner's terms.
 - 5. Provide background information or details you wish given to the landlord/owner regarding the terms of your proposal.
 - 6. Present proposals or letter of intent to the landlord/owner and convey landlord/owner's acceptance or counter-offer back to you.
 - 7. Prepare letter of intent or review proposed lease and explain lease provisions.
 - 8. Coordinate signing of lease and delivering copies to all parties.
- 2. Examples of tasks a buyer's or tenant's agent or subagent may perform with an unrepresented seller or land-lord may include, but not be limited to, the following:
 - a) Tasks for unrepresented seller by buyer's agent:
 - 1. Explain the home selling process.
 - 2. Provide background information, except that required to be confidential, relating to the buyer's ability to perform under the proposed terms of an offer.
 - 3. Review and explain clauses in the offer.
 - 4. Provide estimate of closing costs based on the proposed terms of an offer.
 - 5. Provide market data that justifies the buyer's offer.
 - 6. Present seller's counter-offers to the buyer.
 - 7. Provide follow-up services, including coordinating inspections, appraisals, surveys, etc.
 - 8 Assist with utilities changes.
 - 9. Assist with preparation and filing of documents.
 - 10. Provide referral services, if relocating.
 - b) Tasks for unrepresented landlord by tenant's agent:
 - 1. Explain the leasing process.
 - 2. Provide background information, except that required to be confidential, regarding the tenant's ability to perform under the proposed terms.
 - 3. Review and explain clauses in the proposal.
 - 4. Provide market data that justifies the tenant's proposal.
 - 5. Present landlord/owner's counter proposals to tenant.
 - 6. Coordinate lease preparation, signing, and delivering copies to all parties.

Disciplinary Actions Taken by The Real Estate Commission

(Does Not Include Cases on Appeal)

2001-038 - William J. & Cindy C. Sarraillon vs. Vincent Muniz, Jr. Stipulation and Consent Order. License suspended for thirty (30) days with entire period served on probation from April 3, 2002, through May 2, 2002; plus an additional six (6) hours of continuing education, including three (3) hours in the area of agency and three (3) hours in the area of license law to be completed by October 2, 2002. (Violated Neb.Rev.Stat. § 81-885.24(22) by making a substantial misrepresentation; 81-885.24(26) by violating any rule or regulation adopted and promulgated by the Commission in the interest of the public and consistent with the Nebraska Real Estate License Act, specifically, Title 299, N.A.C., Ch. 5-003.07 by failing to comply with the requirements set forth in § 76-2401 through § 76-2430, particularly, 76-2418(1)(b) by representing a buyer but failing exercise reasonable skill and care for the client; § 76-2419 by failing to perform the terms of the written agreement and exercise reasonable skill and care for the client and promote the interest of the client with the utmost good faith, loyalty and fidelity; § 76-2421(1) by failing, at the earliest practicable opportunity during or following the first substantial contact with the seller or buyer who has not entered into a written agreement for brokerage services to provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved bv Commission and disclose in writing which party the licensee is representing; § 81-885.24(29) by demonstrating negligence to act as a salesper-April 3, 2002

2002-003 - Commission vs. Gary Lee Huber, salesperson. Stipulation and Consent Order. License suspended for thirty (30) days with entire period served on probation from April 3, 2002, through May 2, 2002; plus an additional three (3) hours of continuing education in the area of agency to be completed by October 2, 2002. (Violated Neb.Rev.Stat. § 76-2421(1) by failing, at the earliest practical opportunity during or following the first substantial contact with the potential tenant, who had not entered into a written agreement for brokerage services with a designated broker, to provide the potential tenant with copy of the current Brokerage Disclosure Pamphlet which had been prepared and approved by the Commission and failing to disclose in writing to the potential tenant the types of brokerage relationships the designated broker and affiliated licensees were offering to the potential tenant or to disclose in writing to the potential tenant which party Respondent was representing.) April 3, 2002

You Can Have Access to Your Continuing Education History 24/7

We strongly encourage you to submit your continuing education certificates as you earn them. You can then reference Licensee Information on the Real Estate Commission's website (www.nrec.state.ne.us) or call the Commission and access your continuing education records as they are recorded with the Real Estate Commission.

Reminders on Mailing Labels

Our new mailing labels, as appearing on this newsletter, can also help active licensees keep track of how many continuing education hours they have submitted in their current continuing education period. The label indicates a numerical code to the right of the address. The first set of numbers indicates the number of hours of continuing education an active licensee has submitted, the number behind the slash mark indicates the total number of hours required. If this is followed with an asterisk (*) then the licensee has NOT yet submitted the required 3-hours of designated subject matter

(the R course). The second set of numbers identifies the licensee's continuing education period. For example the notation 01-02 indicates a 2001-2002 continuing education period. In this example November 30, 2002, would be the last day to submit continuing education without incurring a late renewal fee.

For example, if an individual's continuing education was due this year and the individual had completed 6 hours of continuing educa-

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tion without an R course the notation on the mailing label would read: 6.00/12.00* 01-02. The notation for an individual who has completed the current continuing education requirement would be: 12.00/12.00 01 02.

The benefit to regularly submitting your certificates is that you will have up-to-date reminders on your mailings and education history "at your fingertips". These will assist you in avoiding duplication of subject matter and deficiencies that threaten timely renewals.

Rosters/Mailing Labels in Electronic Format

Licensee rosters and mailing labels that have been available for purchase from the Commission can now be obtained in electronic format. The information will be available in several common file formats that can be imported into programs such as Excel, Access, Word, Works, and many others. Although the number of file formats that are offered is limited, those that are available should be compatible with many of the widely-used computer software programs.

Rosters include the name, contact address, license type, and status for each licensee. Mailing labels include the name and contact address for each licensee.

The Commission will continue to offer hard copy rosters/mailing labels for \$50.00 per set. Order forms and fee schedule for the rosters/mailing labels in electronic format are available from the Commission Office and/or on its website. Cost for information on diskette is \$15.00 information e-mailed is \$10.00. Please contact Heidi Burklund at the Commission office for more information about obtaining rosters and/or mailing labels in either the paper or electronic format.

MOLD IS BECOMING SIGNIFICANT REAL ESTATE MATTER

(Editor's Note: This article was written by Stuart Lieberman and has been reprinted with permission by Realty Times.)

Whoever heard of a home not selling because of mold? Or of a "mold contingency?" Five years ago, no one ever heard of such a thing. However, mold is getting more attention and home inspectors need to look for mold on a regular basis, if they are not doing so already.

Most of us laugh at the idea of mold entering into a real estate transaction. But here is the problem: mold litigation is on the rise. More and more lawyers are handling cases relating to mold exposure. Some judgments have been awarded in these cases, suggesting that they may have legal punch.

Mold exists everywhere, all of the time. It usually does not bother anyone. But there are times that mold can be a problem--Problem #1: It can be a problem for people who are unusually sensitive to mold. Some

people experience respiratory problems when they are exposed and they can become very ill. Problem #2: Black mold. Some molds, for example the "black mold" that has been around forever but people are now talking about, seems to make people ill. Again, some people seem to be more sensitive than others, but this black mold appears to have a greater propensity to cause problems.

Mold exists everywhere, but it really likes dark, moist areas, such as dirty heating ducts. A leaking roof that has slow leaked for a long time can create moisture and encourage mold growth. Combine that with a particularly sensitive person, and you may have a lawsuit.

As a result, real estate agents and inspectors need to understand the mold issue. Maybe mold will have to be disclosed by sellers--especially, if a homeowner knows there is an ongoing mold problem that may not be apparent from a basic

inspection. When to disclose is a fact-specific legal issue; however, I believe that mold disclosure will not be uncommon in the near future.

For some reason, schools all over the country are reporting mold issues. Schools are being closed due to mold issues. That makes for a nice community selling point, "We were the first grammar school in the state to be closed due to mold." Recently, a North Jersey school district relocated five kindergarten classes because mold was detected in the schools. They attributed the mold to a crawl space underneath the classrooms that has a dirt floor, and mold. The school district reported that this was not considered to be a general health concern, but a response for the benefit of children with allergies or asthma.

In May 2000, a Houston school reported that it had been addressing "potential mold problems" for over a year. Leaky windows were sealed,

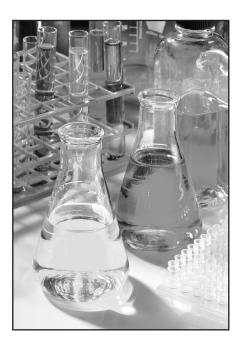
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the heating system had been repaired, some carpeting had been replaced, and dehumidifiers had been installed. School mold problems have also been reported in other schools all over the country. The reports have generally surfaced over the past five years. Is this because mold is new? No. It is because we now have an awareness of the issue that will now cross over into the real estate community.

Landlords also need to be vigilant about the mold issue. A chronic leaking roof, leaking water pipes, bathroom moisture, or a poorly maintained ventilation system can be an invitation to a lawsuit. As science establishes a causal relationship between the presence of mold and human illness, legal exposure will rise.

Landlords must ensure that reasonable means have been taken to avoid harmful mold growth. Indoor air quality experts are available to provide assistance. If mold repairs are needed, be sure to contract with a company that has experience. There are protocols that should be followed, and you will want to ensure that you can prove that the job was done correctly.



EPA OFFERS NEW TEST FOR MOLD

(Editor's note: This article was reprinted with permission by Realty Times.)

Lighthouse Laboratories, LLC recently announced that it is now able to perform a DNA-based test developed by the U.S. Environmental Protection Agency (EPA) for the detection of toxic mold (Stachybotrys Chartarum) using real time Polymerase Chair Reaction (PCR). Only a few laboratories in the country are able to perform this state of the art testing procedure.

Testing for toxic mold has become a significant issue with mortgage brokers, banks, home inspectors, real estate agents, building owners and managers, home-buyers, as well as individual homeowners.

Lighthouse Laboratories #610 Toxic Mold Panel uses a DNA approach, which is considered highly accurate in obtaining quantitative readings for up to 100 different molds. Previous tests, relying on individuals to grow and ship live cultures, have proven to yield significant variances including false positives, as well as false negatives.

Lighthouse Laboratories vice President of Sales Ned Bedrio noted, "We are extremely pleased to be able to offer this quality level of testing. There is too much at stake, both money and health to settle for anything less."

Lighthouse Laboratories will announce availability and pricing in the near future, although it is expected that testing will sell for an introductory rate of around \$200.

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Return Service Requested

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